145-19

RECORD, CASE No. 13,400.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 275.

THE LEHIGH VALLEY RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED OCTOBER 22, 1888.

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1 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Lehigh Valley Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treatise, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission,

2 a manifest error hath happened, to the great damage of the said Lehigh Valley Railroad Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 22d day of October instant, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighteenth day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

3 [Endorsed:] 24. Lehigh Valley Railroad Co., plaintiff in error, *vs.* Commonwealth of Pennsylvania, defendant in error.

Writ of error. Filed in Supreme Court, middle district, Oct. 19, 1888.

4 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be holden at Washington on the 22d day of October instant, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the middle district, wherein The Lehigh Valley Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 18th day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

JOSEPH P. BRADLEY,
Associate Justice Supreme Ct U. S.

Due service of the above citation is admitted.

JOHN F. SANDERSON,
Deputy Attorney General of Pennsylvania.

5 [Endorsed:] Lehigh Valley Railroad Co., plaintiff in error, *vs.* Commonwealth of Pennsylvania, defendant in error. Citation and acceptance of service. Filed in supreme court, middle district, Oct. 19, 1888.

6 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States hereto annexed as follows, to wit:

Among the records and proceedings enrolled in the court of common pleas in and for the *cout* county of Dauphin, in the Commonwealth of Pennsylvania, to No. 114, Sept. term, 1887, is contained the following:

Copy of Appearance Docket Entries, Sept. Term, 1887.

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY.	114. Appeal from the Settlement of the Auditor General and State Treasurer.

July 8th, 1887, Kirkpatrick; Olmsted.
July 8th, 1887, appeal and specifications of objections filed.
July 8th, 1887, bond filed.
Sept. 9th, 1887, *narr.* and copy of account filed.
December 18, 1887, special term J. L.
January 30th, 1888, special term J. L.

January 30th, 1888, stipulation to try without a jury filed.
January 30th, 1888, affidavit of W. C. Alderson filed.
April 9th, 1888, stenographer's notes filed.
April 9th, 1888, opinion and finding of the court filed, deciding that there is due the Commonwealth of Pennsylvania by the defendant the sum of fourteen thousand four hundred and sixty-two $\frac{08}{100}$ and costs; counsel notified.
May 3d, 1888, exceptions on part of the Commonwealth filed.
May 9th, 1888, exceptions on part of the defendant filed.
Same day, exceptions of defendant overruled and judgment entered in accordance with opinion filed.
7 May 11th, 1888, exceptions of Commonwealth overruled and judgment entered in accordance with opinion filed.
May 17, 1888, writ of error on part No. 24, May term, 1888, on part of defendant from supreme court received and filed.
Certified.

[Seal of the Court of Common Pleas of Dauphin County.]

W. H. ULRICH,
Prothonotary.

Appeal from the settlement of an account by the auditor general and State treasurer.

In the matter of the account for tax on gross receipts, amounting to $30,642.88, settled against the Lehigh Valley Railroad Company by the auditor general of Pennsylvania and approved by the State treasurer, a copy of which account is hereto attached.

The said Lehigh Valley Railroad Company hereby appeals from said settlement to the court of common pleas of Dauphin county, and files the following specifications of objections thereto, agreeably to the provisions of the act of assembly in such case made and provided:

1. The main line of the Lehigh Valley Railroad Company extends from Wilkes Barre, in the State of Pennsylvania, to Perth Amboy, in the State of New Jersey. The company also owns numerous branch roads, some of which are in Pennsylvania and some in New Jersey. Under agreement with other railroad companies it runs its own trains from Wilkes Barre to the city of New York, and also from Wilkes Barre to the city of Buffalo, in the State of New York, and its principal business consists of the transportation of freight and passengers to or from other States out of, into, or through the State of Pennsylvania. A large proportion of the receipts taxed in the settlement hereby appealed from was derived from freight and passengers carried by continuous transportation from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania or from points in other States to points in other States passing through the State of Pennsylvania. The taxation of freight or passengers transported by continuous lines of transportation to or from other States out of, into, or through the State of Pennsylvania or of the receipts for such transportation to

or from other States out of, into, or through the State of Penn-
8 sylvania is in violation of that clause of section 8 of article I of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes; and the act of June 7, 1879, under which said tax is claimed, or any other act of assembly, if it shall be found to warrant the imposition of the said tax, is therefore unconstitutional and void.

THE LEHIGH VALLEY
RAILROAD COMPANY,
(Signed) By its attorney, M. E. OLMSTED.

Harrisburg, Pa., June 25, 1887.

Account.

Lehigh Valley Railroad Company in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts, per act of June 7th, 1879, for six months ending December 31, 1886, as per reports herewith filed:

Gross receipts	$4,798,933 54	
Proportion taxable in Penna., $\frac{2606\,9}{3\,2\,6\,6\,1}$	3,835,926 60	
Tax at rate of eight-tenths of one per cent.		$30,642 88
Due Commonwealth		$30,642 88

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Apr.* 28, 1887.

Settled and entered.
(Signed) J. B. NILES,
Auditor General.

TREASURY DEPARTMENT OF PA,
HARRISBURG, *June* 3, 1887.

Approved.
(Signed) H. C. GREENAWALT,
For M. S. QUAY,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *June* 6, 1887.

I hereby certify that the above is a true copy of the original remaining on file in this department.
Witness my hand and seal of office the day and year aforesaid.
(Signed) THOMAS McCAMANT,
[SEAL.] For A. WILSON NORRIS,
Auditor General.

9 Endorsement: No. 114. Sept. term, 18887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Ap-

peal from the settlement of an account by the auditor general and State treasurer. Filed in the auditor general's office the 27th day of June, 1887. A. W. Norris, auditor general. Filed in the prothonotary's office the 8th day of July, 1887. W. H. Ulrich, prothonotary. M. E. Olmsted, attorney for defendant.

Bond on Appeal from the Settlement of an Account by the Auditor General and State Treasurer.

10 Know all men by these presents that we, The Lehigh Valley Railroad Company and Charles Hartshorne, of Merion station, State of Pennsylvania, and William A. Ingham, of the city of Philadelphia and State of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of sixty-one thousand two hundred & eighty-five $\frac{76}{100}$ dollars ($61,285.76), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and the corporate seal of said company and dated the 28th day of June, A. D. 1887.

Whereas the above-bounden Lehigh Valley Railroad Company has entered in the office of the auditor general of Pennsylvania an appeal to the court of common pleas of Dauphin county from the settlement of an account for tax on gross receipts, amounting to thirty thousand six hundred forty-two & $\frac{88}{100}$ dollars ($30,642.88), made by the auditor general on the 28 of April, 1887, and approved by the State treasurer on the 3rd of June, 1887:

Now, the condition of this obligation is such that if the said Lehigh Valley Railroad Company shall prosecute its said appeal with effect and pay all costs or charges which the court or arbitrators having jurisdiction to hear and determine said appeal shall award, and also pay any sum of money which shall appear by the judgment of the court or award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then this obligation to be void and of none effect, or otherwise to be and remain in full force and virtue.

LEHIGH VALLEY R. R. COMPANY,
By CHARLES HARTSHORNE, *Vice-President.*

[Seal of the Lehigh Valley Railroad Company.]

Attest: JOHN R. FAHNSHAWE, *Secretary.*
CHARLES HARTSHORNE. [SEAL.]
WM. A. INGHAM. [SEAL.]

Signed, sealed, and delivered in presence of—
J. R. FAHNSHAWE.
D. L. BAIRD.

The security of the above bond is approved.
ROBERT N. WILSON,
Judge C. P. No. 4, Philadelphia Co.

(Must be signed by a judge of some court in county where sureties reside.)

11 Endorsement: No. 114. Sept. term, 1887. Commonwealth of Pennsylvania *vs.* Lehigh Valley Railroad Company. Bond on appeal from a settlement by the auditor general and State treasurer.

And now, to wit, July 1, 1887, the security of the within bond is hereby approved.

J. W. SIMONTON,
President Judge.

Filed July 8, 1887.

M. E. OLMSTED,
Attorney for Defendant.

12 *Stipulation to Try Without Jury.*

In the Court of Common Pleas of Dauphin County, No. 114, Sept. Term, 1887.

COMMONWEALTH OF PENNSYLVANIA
vs.
LEHIGH VALLEY RAILROAD CO.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court, to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to the decision of the court and to dispense with trial by jury," approved the 22d day of April, 1874, subject, however, to a writ of error, as in other cases, at the option of either party.

Jan. 30th, 1888.

W. S. KIRKPATRICK,
Attorney General.
M. E. OLMSTED.

Endorsement: 114. Sept. term, 1888. Commonwealth *vs.* Lehigh Valley R. R. Stipulation to try without jury. Filed Jan. 30, 1888.

13 *Narr. and Copy of Account.*

In Dauphin Common Pleas, No. 114, Sept. Term, 1887.

DAUPHIN COUNTY, *ss:*

The Commonwealth of Pennsylvania, by her attorney general, complains of The Lehigh Valley Railroad Company of a plea that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her, for that whereas the said defendants, on the third day of June, A. D. 1887, at the county of Dauphin

aforesaid, were indebted to the said plaintiff in the sum of thirty thousand six hundred and forty-two $\frac{88}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, and duly entered in the books of their office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon, at the rate of twelve per centum per annum, from and after the expiration of sixty days from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, for tax on gross receipts, per act of June 7, 1877, for six months ending Dec. 31st, 1886, which said account was, on the 3 day of June, A. D. 1887, submitted to, revised, and approved by the State treasurer and a copy thereof thereafter sent by the said auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and appealed from, whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, parcel of the said sum above demanded, with interest and other legal charges; and, being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the said last-mentioned sum of money;

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants to and for the
14 use of the said plaintiff; and also a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general and State treasurer of this Commonwealth against the said defendants on the day and year in the first count mentioned for tax on gross receipts, and approved by the State treasurer on the day and year in the first count mentioned;

And whereas afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request; yet the said defendants have disregarded their said promises, and, although often requested so to do, have not as yet paid any of the said several sums of money or any part thereof, to the damage of the said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.

JOHN F. SANDERSON,
Deputy Attorney General.

15 *Copy of Account.*

Lehigh Valley Railroad Company in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts, per act of June 7th, 1879, for six months ending December 31, 1886, as per reports herewith filed:

Gross receipts	$4,798,933 53	
Proportion taxable in Penna., $\frac{26069}{32661}$	3,835,926 60	
Tax at rate of eight-tenths of one per cent.		$30,642 88
Due Commonwealth		$30,642 88

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *Apr.* 28, 1887.

Settled and entered.
(Signed) J. B. NILES,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, *June* 3, 1887.

Approved:
(Signed) H. C. GREENAWALT,
For M. S. QUAY,
State Treasurer.

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *June* 6, 1887.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office the day and year aforesaid.
(Signed) THOMAS McCAMANT,
[SEAL.] For A. WILSON NORRIS,
Auditor General.

Endorsement: No. 114. Sept. 2, 1887. Commonwealth *vs.* Lehigh Valley R. R. Co. *Narr.* & copy of account. Filed Sept. 2, 1887. W. S. Kirkpatrick, attorney general.

16 *Report.*

To the auditor general of Pennsylvania:

In accordance with the requirements of the seventh section of an act entitled "An act to provide revenue by taxation," approved June 7, 1879, as treasurer of the Lehigh Valley Railroad Company I make the following report of the gross receipts of said company for the six months ending 31st December, 1886.

(Signed) WILLIAM C. ALDERSON, *Treasurer.*

OFFICE OF THE LEHIGH VALLEY RAILROAD COMPANY,
PHILADELPHIA, PENNA., *April 18th*, 1887.

Gross receipts derived from all sources during the above period as follows:

For tolls and transportation	
For telegraph business	
For telephone business	
For express business	
For transportation of coal, mined, purchased, or sold	
Total gross receipts	$4,798,933 53

Total miles of line,
Total miles of line in Pennsylvania, } See last report of mileage.

STATE OF PENNSYLVANIA, *City of Philadelphia*, } *ss:*

On this 18th day of April, A. D. 1887, personally appeared before me, a notary public in and for the said city aforesaid, Wm. C. Alderson, treasurer of the Lehigh Valley Railroad Company, who, being duly affirmed according to law, did depose and say that the foregoing report is true and correct, and that the company has accounted for and returns herewith gross receipts for transportation of coal mined, purchased, or sold at the same rates as are charged for the transportation of similar freight for other companies or individuals.

(Signed) WM. C. ALDERSON, *Treasurer.*

Affirmed and subscribed before me the day and year aforesaid.
[SEAL.] J. HENRY WILLIAMS,
Notary Public.

17 *Affidavit of Wm. C. Alderson.*

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. } No. 114. September Term, 1887, in the Court of Common Pleas of Dauphin County.

STATE OF PENNSYLVANIA, *City of Philadelphia*, } *ss:*

On this 10th day of November, 1887, before me, a notary public in and for said State, residing in said city, personally appeared Wm. C. Alderson, who, being by me duly affirmed according to law, did depose and say as follows:

I am the treasurer of The Lehigh Valley Railroad Company, the defendant in the above-entitled suit, and as such treasurer made to the auditor general of Pennsylvania, for the six months ending December 31, 1886, the report of gross receipts upon which the account for taxes was settled by the auditor general.

The main line of railroad operated by the Lehigh Valley Railroad Company extends from Perth Amboy, in the State of New Jersey, to Wilkes Barre, in the State of Pennsylvania, with numerous branches in Pennsylvania and New Jersey. The company has also running arrangements with other companies whereby it runs its own trains, both passenger and freight, on a through line from Jersey City, New Jersey, to Buffalo, New York.

A very large portion of its business consists of the transportation of freight, passengers, &c., from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania, or from points in other States to points in other States, passing through the State of Pennsylvania, about one-half of its entire receipts being derived from the transportation of anthracite coal from Pennsylvania into other States.

The following detailed statement shows the several classes of transportation from which the receipts returned to and taxed by the auditor general were derived:

Coal.

Receipts from transportation of coal from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$590,247 50
Receipts from transportation of coal by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but over lines partly in other States—that is to say, passing out of Pennsylvania into other States and back again in course of transportation	196,284 44
Receipts from transportation of coal by continuous carriage from points in Pennsylvania to points in other States	2,297,949 10
Total receipts from transportation of coal	$3,084,481 04

Freight Other Than Coal.

Receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$397,686 76
Receipts from continuous transportation from points in Pennsylvania to other points in Pennsylvania, but passing over lines partly in other States—that is to say, passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	10,818 46
Receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania	37,760 54

18	Receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	217,722 34
	Receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	201,070 12
	Receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, to points in a third State	265,777 28
	Receipts from transportation by continuous carriage from points in foreign States to other points in foreign States not touching the State of Pennsylvania	23,850 87
	Total	$1,154,686 37

Passengers, Express, and Mail.

	Receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$365,507 24
	Receipts from continuous transportation from points in Pennsylvania to other points in Pennsylvania, but passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	557 52
	Receipts from transportation by continuous carriage from points in a foreign State to other points in the same State passing through the State of Pennsylvania	12,733 71
	Receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	74,699 66
	Receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	70,495 36
	Receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, to points in a third State	2,091 31
19	Receipts from transportation from points in a foreign State to other points in a foreign State not touching Pennsylvania	33,681 32
	Total	$559,766 12

Summary.

1.	Total receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$1,353,441 50

2. Total receipts from transportation by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but over lines partly in Pennsylvania—that is to say, passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	207,660 42
3. Total receipts from transportation by continuous carriage from points in a foreign State to other points in the same State passing through the State of Pennsylvania	50,494 25
4. Total receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	292,422 00
5. Total receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	2,569,514 58
6. Total receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, and ending in a third State	267,868 59
7. Total receipts from transportation from points in foreign States to other points in foreign States not touching Pennsylvania	57,532 19
Total receipts	$4,798,933 53

(Signed) WM. C. ALDERSON.

Affirmed and subscribed before me the day and year aforesaid.

J. HENRY WILLIAMS,
[SEAL.] *Notary Public.*

Endorsement: No. 114. Sept. T., 1887. Commonwealth *vs.* Lehigh Valley R. R. Co. Affidavit of Wm. C. Alderson, treas. Filed January 30, 1888. Olmsted.

20 *Further Affidavit of Wm. C. Alderson.*

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. } No. 114. September Term, 1887, in the Court of Common Pleas of Dauphin County.

STATE OF PENNSYLVANIA, *City of Philadelphia,* } *ss:*

On the 20th day of January, A. D. 1888, before me, a notary public in and for said State, residing in said city, personally appeared William C. Anderson, who, being by me duly sworn according to law, did depose and say as follows:

I am the treasurer of The Lehigh Valley Railroad Company, the defendant above named, and on the tenth day of November, 1887, made a sworn statement for use in the said case. Wherever in the

said statement of November tenth, 1887, I used the term "continuous transportation" or "continuous carriage," the freight or passengers from the transportation of which the receipts were derived were carried between the points mentioned for a single sum or charge and upon a single way-bill or ticket, and were, when taken upon the cars of this company, destined to be carried and were actually carried from point to point as in said statement set forth.

The Lehigh Valley Railroad Company has no railroad of its own reaching the city of Philadelphia, but transports coal and other merchandise, and sometimes passengers, from Mauch Chunk and other points in Pennsylvania over its own line to Phillipsburg, in the State of New Jersey, from which point it is carried upon the Belvedere and Delaware railroad to Trenton, and thence by the Pennsylvania railroad lines to the city of Philadelphia. So far as the Lehigh Valley railroad line is concerned the transportation is from Mauch Chunk, or the other points in Pennsylvania, to Phillipsburg, in New Jersey; but by arrangements between this company and the corporations owning the other roads the transportation is continuous from Mauch Chunk and the other points in Pennsylvania to Philadelphia.

21 The receipts mentioned in my statement of November tenth in the second paragraph in each instance under the respective heads of "coal," "freight other than coal," and "passenger, express, and mail," and also in the second item in the summary, were derived in the manner above explained.

Some of the trains, and in many instances the same cars, which carried the freight and passengers indicated between points in Pennsylvania and the city of Philadelphia carried also freight and passengers destined and carried from points in Pennsylvania to points in New Jersey and New York, and *vice versa*.

The various items of receipts shown in my statement of November tenth and classified in the third paragraph of the summary as "receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania," were derived from transportation of freight and passengers billed or ticketed from the city of New York to other points in the State of New York, and *vice versa*.

The same trains and the same cars which carried the said freight and passengers carried also freight and passengers destined and carried from points in Pennsylvania to points in other States and from points in other States to points in Pennsylvania.

(Signed) WM. C. ALDERSON, *Treasurer.*

Sworn and subscribed before me the day and year aforesaid.

[SEAL.] J. HENRY WILLIAMS,
Notary Public.

Endorsement: No. 114. Sept. term, 1887. Commonwealth *vs.* Lehigh Valley R. R. Co. Affidavit of Wm. C. Alderson, treasurer. Filed January 30, 1888. Olmsted.

22 *Stenographer's Notes of Testimony.*

HARRISBURG, PA., MONDAY, *January* 30, 1888.

Deputy Attorney General Sanderson having stated the case for the Commonwealth—

ROBERT S. FRAZER, called by Commonwealth, sworn with uplifted hand.

Direct examination by Mr. SANDERSON:

Q. In April, 1887, were you corporation clerk in the office of the auditor general?

A. Yes, sir.

Q. And as such did you make a settlement in the case of the Lehigh Valley Railroad Company?

A. Yes, sir.

Q. Are these the report, account, and settlement in that case (handing papers to witness)?

A. Yes, sir; this is the settlement made by the auditor general April 28, 1887, and approved by the State treasurer June 3, 1887, showing a balance due for tax on gross receipts for six months ending December 31, 1886, of $30,642.88. The settlement is based on a report filed by the Lehigh Valley Railroad Company on the 20th day of April, 1887.

Commonwealth's counsel offers the report, account, and settlement in evidence, marked "Exhibit 1 L., H. C. D."

Commonwealth rests.

Defendant's counsel offers in evidence appeal and specifications of objections, which is marked "Exhibit 2 L., H. C. D."

Also the deposition of William C. Alderson, treasurer of the corporation defendant, dated November 10, 1887.

Also a further deposition of William C. Alderson, taken January 20, 1888.

Attorney General KIRKPATRICK: The affidavits are admitted with like effect as if the matters therein contained were testified to upon the witness stand by the party making them. The Commonwealth objects, however, to the reception upon the ground of incompetency and irrelevancy of the matters testified to.

Defendant rests.

Mr. OLMSTED: At the request of the attorney general it is admitted for the purposes of this case that the Lehigh Valley Railroad Company was originally incorporated by the State of Pennsylvania, and that it owns and operates as part of its main line about 66 miles of railroad in the State of New Jersey.

(Argument.)

Endorsement: 114. Sept. T., 1887. Commonwealth *vs.* Lehigh Valley R. R. Stenographer's notes. Filed Apr. 9, 1888.

23 *Findings of Fact & Opinion of the Court.*

COMMONWEALTH *vs.* LEHIGH VALLEY R. R. Co. } Dauphin C. P., No. 114, Sept. T., 1887. Appeal from Accounting Officers.

By the COURT:

This case was tried without a jury under the act of 1874. We find the facts to be as follows:

1. The defendant is a railroad company incorporated by this Commonwealth and engaged in the business of transporting freight and passengers. Its railway connects with other lines in other States.

2. For the six months ending Dec. 31, 1886, its gross receipts for transportation were $4,798,933.53. Of this amount $1,353,441.50 was received for transportation beginning and ending in Penna. without passing out of the State in the course of transit; $207,660.42 was received for transporting by continuous carriage freight and passengers from one point in Penna. to another point in Penna., which freight and passengers were carried out of the State and in again in course of transit, and $3,237,831.61 was received for transportation beginning in Penna. and ending in other States, or beginning in other States and ending in Penna., or beginning in other States, passing through Penna., and ending in other States, or beginning and ending in other States without touching Penna. In the last five classes the transportation was continuous from the point of beginning to the point of ending, and the freight and passengers were carried for a single sum or charge and upon a single way-bill or ticket.

3. This settlement taxes $\frac{26059}{32661}$ of the entire sum of $4,798,933.53 (that fraction representing the defendant's mileage within the State) for the six months ending Dec. 31, 1886, and is made under section 7 of the act of 1879. (P. L., 116.)

Conclusions of Law.

The questions raised by this appeal have been discussed in Com. *v.* Del. & H. Can. Co., No. 534, June T., 1887, and Com. *v.* N. Y., L. E. & W. R. R. Co., No. 523, June T., 1887. For reasons there
24 given we hold that the Commonwealth can only recover tax upon the two items of $1,353,441.50 and $207,660.42, being the amount received for transportation between points both of which are within this State.

The sum due the Commonwealth is as follows:

$\frac{8}{10}$ of 1 per cent. upon----	$1,353,441 50		
	207,660 42		
		$1,561,101 92	$12,488 80
Int. from June 3, '87, to April 2, '88			1,248 88
Att'y gen'l's com'n			724 40
Total			$14,462 08

For which amount we direct judgment to be entered if exceptions are not filed according to law.

(Signed) JOHN B. McPHERSON, *A. L. J.*

Endorsement: Commonwealth *vs.* Lehigh Valley R. R. Co. Finding of facts and opinion. Filed Apr. 9, 1888.

25 *Exceptions on the Part of the Commonwealth.*

1. The learned court erred in its conclusion as follows:

"We hold that the Commonwealth can only recover tax upon two items of $1,353,441.50 and $207,660.42, being the amount received for transportation between points both of which are within this State."

2. The learned court erred in not rendering judgment in favor of the Commonwealth for the full amount of her claim.

(Signed) JNO. F. SANDERSON.
Deputy Attorney General.

Endorsement: Commonwealth *vs.* Lehigh Valley R. R. Co. Exceptions on the part of the Commonwealth. Filed May 3, 1888.

May 11, 1888.—Exceptions overruled and judgment directed in accordance with opinion previously filed.

(Signed) JOHN B. McPHERSON, *A. L. J.*

26 *Defendant's Exceptions to Decision of the Court.*

This case having been tried without a jury under the act of 1874, defendant files the following exceptions to the decision of the court:

1. The court erred in including in the judgment in favor of the Commonwealth a tax upon $207,660.42, receipts for transporting freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit.

2. The court erred in deciding that "in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be."

3. The court erred in not deciding that the transportation by continuous carriage of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of

transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

4. The court erred in directing judgment to be entered in favor of the Commonwealth — $14,462.08.

(Signed) M. E. OLMSTED,
Attorney for Defendant.

Order of Court Overruling Exceptions.

May 4, 1888.—Exceptions overruled and judgment directed to be entered in accordance with opinion previously filed.

Exception to defendant.

(Signed) JOHN B. McPHERSON, *A. L. J.* [SEAL.]

Endorsement: No. 114. Sept. 7, 1887. Commonwealth *vs.* Lehigh Valley R. R. Defendant's exceptions to the decision of the court and order of court overruling the same. Filed May 9, 1888. Olmsted.

27 *Writ of Error from the Supreme Court of Pennsylvania.*

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of the Supreme Court of Pennsylvania, Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between The Lehigh Valley Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg in and for the middle district of said Commonwealth, on the 21 Monday foll. 1 Mon. of Jan., 1888, being the 1st Monday of the term, and this writ, that, the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Isaac G. Gordon, doctor of laws, chief justice of our supreme court, at Harrisburg, the 17 day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Commonwealth the one hundred and twelfth.

WILLIAM PEARSON,
Prothonotary.

28 Endorsement: No. 24. May term, 1888. Supreme court, middle district. Lehigh Valley Railroad Co., plaintiff in error, *vs.* Com. of Pa., defendant in error. Filed in supreme court May 26, 1888. Writ of error to the court of C. P. for the county of Dauphin. No. 114. Sept. term, 1887. Returnable the 21 Mon. foll. 1 Monday of Jan., 1888. Rule on the defendant in error to appear and plead on the return day of the writ. N. B.: 10 days' notice to the parties or counsel below is necessary to compel an appearance. May 17, 1888. Service accepted. W. S. Kirkpatrick, attorney general.

Certificate as to Filing of Recognizance.

29 Certificate of filing of recog.

I certify that recognizance for costs in $100, with A. C. Stamm as bail, has been filed in the supreme court.

WILLIAM PEARSON,
Prothonotary.

Return to Writ of Error.

The record and process and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

J. W. SIMONTON, *P. J.* [L. S.]

30 In the Supreme Court of Pennsylvania in and for the Middle District of said Court, May Term, 1888.

At a supreme court of the State of Pennsylvania sitting in and for the middle district of said court, at the city of Harrisburg, Pennsylvania, on the 21st Monday following the 1st Monday of January, A. D. 1888—present, the Honorable Isaac G. Gordon, chief justice, and Edward M. Paxson, James P. Sterrett, Henry Green, Silas M. Clark, and Henry W. Williams, justices, and William Pearson, prothonotary, of the said supreme court in and for said middle district, to May term, 1888, No. 24—it is contained as follows, to wit:

Writ of error to the court of common pleas of Dauphin county.

LEHIGH VALLEY RAILROAD COMPANY, Defendant Below, *vs.* COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below.	No. 114. Sept. Term, 1887.

Docket Entry.

May 17th, 1888.—Præc., aff., and recog. filed; *eo die*, exit writ of error, returnable *sec. reg.*

May 24th, 1888.—Assignments of error returned and filed.
May 26th, 1888.—Record returned and filed.
May 31st, 1888.—Argued.
Oct. 1st, 1888.—Judgment affirmed *per curiam*.
Oct. 19th, 1888.—Writ of error from the Supreme Court of the United States received and filed.

31 Oct. 19th, 1888.—Petition for allocatur of writ from the Supreme Court of the United States; allocatur of said writ by Hon. Joseph P. Bradley, justice of said court, and writ of error bond in the sum of $3,000 received and filed.

Oct. 19th, 1888.—Citation from said Hon. Joseph P. Bradley and acceptance of service thereof by the deputy attorney general of the State of Pennsylvania received and filed.
Certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

Præcipe for Writ of Error.

32 Precipe.

In the Supreme Court of Pennsylvania for the Middle District.

LEHIGH VALLEY R. R. Co., Def't Below, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below, Defendant in Error.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and proceedings in a certain action of debt depending therein to No. 114 of Sept. term, *term* 1887, returnable to May term, 1888.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

To Wm. Pearson, prothonotary supreme court of Pa., middle district.

Affidavit.

DAUPHIN COUNTY, *ss:*

M. E. Olmsted, attorney for the above-named plaintiff in error, being duly sworn according to law, deposes and says that the writ of error in this case is not intended for delay.

M. E. OLMSTED,
Att'y for L. V. R. R. Co.

Sworn & subscribed before me this 17 day of May, 1888.

WILLIAM PEARSON,
Prothonotary.

33 *Recognizance.*

In the Supreme Court of Pennsylvania for the Middle District.

LEHIGH VALLEY RAILROAD COMPANY, Plaintiff in Error, *vs.* COMMONWEALTH OF PENNSYLVANIA, Defendant in Error. } Surwrit of Error to the Court of Common Pleas for the County of Dauphin, of Sept. Term, 1887. No. 114.

DAUPHIN COUNTY, *ss:*

We, The Lehigh Valley Railroad Company, per M. E. Olmsted, attorney, and A. C. Stamm, severally acknowledge to owe the above-named defendant in error the sum of one hundred dollars, upon condition that the above-named plaintiff in error prosecute writ of error with effect, and if judgment be affirmed or the writ of error be discontinued or non-prossed, to pay the cost adjudged accruing upon such judgment and all other costs that may be awarded upon such writ of error.

LEHIGH VALLEY R. R. CO.,
Per M. E. OLMSTED.
A. C. STAMM.

Taken and acknowledged this 17 day of May, A. D. 1888.
WILLIAM PEARSON,
Prothonotary.

34 Endorsement: No. 24. May term, 1888. Supreme court of Pennsylvania, middle district. Lehigh Valley Railroad Co. *vs.* Commonwealth of Pennsylvania. Precipe, affidavit, and recognizance for writ of error. Dauphin county. Filed May 17, 1888. M. E. Olmsted, attorney for plaintiff in error.

Assignments of Error.

1. The court erred in overruling the first exception filed by defendant, which was as follows:

"The court erred in including in the judgment in favor of the Commonwealth a tax upon $207,660.42, receipts for transporting freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit."

2. The court erred in overruling the second exception filed by defendant, which was as follows:

"The court erred in deciding that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be.'"

3. The court erred in overruling the third exception filed by defendant, which was as follows:

"The court erred in not deciding that the transportation, by continuous carriage, of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

4. The court erred in overruling the fourth exception filed by the defendant, which was as follows:

"The court erred in directing judgment to be entered in favor of the Commonwealth for $14,462.08."

M. E. OLMSTED,
Attorney for Plaintiff in Error.

35 *Remittitur to Court of Common Pleas of Dauphin County.*

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of the Supreme Court of Pa., Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Whereas, by virtue of our writ of error from our supreme court of Pennsylvania in and for the middle district, returnable in the said court on the 21 Monday foll. 1 Mon. of Jan., in the year of our Lord one thousand eight hundred and eighty-eight, a record was brought into the same court of a judgment rendered against The Lehigh Valley Railroad Company, plaintiff in error, at the suit of The Commonwealth of Pennsylvania, defendant in error, and it was so proceeded in our supreme court that the said judgment was affirmed and the record and proceedings thereupon and all things concerning the same were (agreeably to the directions of the act of assembly in such cases made and provided) ordered by the said supreme court to be remitted to the court of com. pleas for the county of Dauphin aforesaid as well for execution or otherwise as to justice shall appertain. Wherefore we remit you the record of the judgment aforesaid and the proceedings thereupon in order for execution or otherwise as aforesaid.

Witness the Hon. Isaac G. Gordon, chief justice of our supreme court, at Harrisburg, the 2nd day of Oct., in the year of our Lord one thousand eight hundred and eighty-eight.

WILLIAM PEARSON,
Prothonotary.

36 *Opinion of the Supreme Court of Pennsylvania.*

LEHIGH VALLEY RAILROAD
vs.
COMMONWEALTH.
No. 24. May Term, 1888.

Error to the court of common pleas of the county of Dauphin.
Argued May 31st, 1888.

Per Curiam:

We have examined with care the opinion of the learned judge who decided the above-stated case in the court below, and we are satisfied that the conclusions re-ched by him are correct; nor do we deem it advisable to add anything to what he has so well said.

The judgment is affirmed.

Endorsement: No. 24. May term, 1888. Lehigh Valley Railroad Co. *vs.* Commonwealth. *Per curiam.* Filed Oct. 1st, 1888.

Return to Writ of Error from the Supreme Court of the United States.

An- now, here, on this day, to wit, the 20th day of October, A. D. 1888, the said The Lehigh Valley Railroad Company produced to the supreme court of Pennsylvania, here, the writ of the United States of America for the correcting of errors of and upon the
37 premises, commanding the record and proceedin-s aforesaid of the judgment aforesaid so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the 22d day of October, A. D. 1888, which writ of error is hereto attached.

In pursuance whereof, and in accordance with the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

Petition for Allocatur.

38 To the honorable justice- of the Supreme Court of the United States:

The petition of the Lehigh Valley Railroad Company respectfully showeth—

That the main line of railroad operated by your petitioner extends from Wilkes Barre, in the State of Pennsylvania, to Perth Amboy, in the State of New Jersey, and that your petitioner has running arrangements with other companies owning connecting roads.

That a large portion of its business consists of the transportation

of freight and passengers to or from other States out of, into, or into, through, and out of the State of Pennsylvania.

That a portion of its business consists also in the transportation of freight and passengers destined from points in Pennsylvania to other points in Pennsylvania by lines partly in Pennsylvania and partly in other States, the said freight and passengers being carried out of Pennsylvania into other States and back again into Pennsylvania in course of transit, as, for instance, anthracite coal carried upon the railroad of your petitioner from Mauch Chunk, Pennsylvania, to Phillipsburg, New Jersey, thence upon the Belvedere, Delaware, railroad to Trenton, New Jersey, and thence over the New York division of the Pennsylvania Railroad Company to Philadelphia, Pa., the receipts of your petitioner from such transportation having been $207,660.42 during the six months ending December 31, 1886.

39 That the auditor general of Pennsylvania, claiming to act under the authority of the seventh section of an act of the General Assembly of said State approved June 7, 1879, settled an account against your petitioner for tax on gross receipts for the six months ending December 31, 1886, in which account was embraced a tax of eight mills upon the item of $207,660.42, derived as aforesaid.

That your petitioner appealed from the said settlement of its account to the court of common pleas of Dauphin county, to No. 114, September term, 1887, in said court, and in its appeal objected to the legality of the tax upon the ground that the act of assembly imposing it was in violation of that clause of section 8 of article I of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

That the court of common pleas of Dauphin county entered judgment in favor of the Commonwealth of Pennsylvania and against your petitioner, in which was specifically imposed a tax of eight mills upon the item of $207,660.42 of receipts before mentioned.

That to this decision of the court your petitioner filed, *inter alia*, the following exceptions:

"1. The court erred in including in the judgment in favor of the Commonwealth a tax upon $207,660.42, receipts for transporting freight and passengers from one point in Pennsylvania to other points in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit.

40 2. The court erred in deciding that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance, the commerce here is purely internal, whatever the mere form of it may be.'

3. The court erred in not deciding that the transportation by continuous carriage of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit, was interstate transportation, and that the taxation of the

receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

That the said exceptions having been overruled by the court of common pleas of Dauphin county, your petitioner, by writ of error, carried the case to the supreme court of Pennsylvania, to No. 24, May term, 1888, of the middle district of said court, and among its assignments of error included the overruling of the aforesaid exceptions by the court of common pleas of Dauphin county.

That the said cause having been fully argued in the supreme court of Pennsylvania, that court, upon the first day of October, 1888, affirmed the judgment of the court of common pleas of Dauphin county.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the judgment of the said court, as already shown, involved the decision of the Federal question, and that said decision is
41 in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

Wherefore your petitioner (herewith presenting a bond, with security, for approval) prays that the writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same; and it will ever pray, &c.

THE LEHIGH VALLEY RAILROAD COMPANY,
By its attorney, M. E. OLMSTED.

Allocatur of Writ.

Writ of error is allowed pursuant to the foregoing petition.
October 18th, 1888.

JOSEPH P. BRADLEY,
Associate Justice of Supreme Court U. S.

42 *Writ of Error Bond.*

Supreme Court of the United States.

LEHIGH VALLEY RAILROAD COMPANY, Plaintiff in Error, *vs.* COMMONWEALTH OF PENNSYLVANIA, Defendant in Error.	In Error to the Supreme Court of Pennsylvania, Middle District. No. 25. May Term, 1888.

Know all men by these presents that we, The Lehigh Valley Rail-

road Company, a corporation of the State of Pennsylvania, and William A. Ingham and Charles Hartshorne, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of three thousand dollars ($3,000), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and dated the 15th day of October, A. D. 1888.

Whereas lately, in a court of common pleas in and for the county of Dauphin, judgment was entered against The Lehigh Valley Railroad Company at the suit of the Commonwealth of Pennsylvania, of January term, 1888, No. 516, which judgment was afterwards affirmed by the supreme court of the State of Pennsylvania in a certain plea and suit in said court of May term, 1888, No. 25, and
43 the said Lehigh Valley Railroad Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

Now, the condition of this obligation is such that if the above-name- Lehigh Valley Railroad Company, plaintiff in error, shall prosecute its writ of error with effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

THE LEHIGH VALLEY RAILROAD COMPANY,
By CHAS. HARTSHORNE, *President.*

[Seal of L. V. R. R. Co.]

Attest: JOHN R. FANSHAW, *Secretary.*
WM. A. INGHAM. [SEAL.]
CHAS. HARTSHORNE. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN R. FANSHAW.
EDWIN R. BAILES.

The above bond is approved.
October 18th, 1888.

JOSEPH P. BRADLEY,
Asst. Justice Sup. C't U. S.

44 *Certificate.*

STATE OF PENNSYLVANIA:

In testimony that the fore*h*oing, contained on pages six to 43, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the S-ate of Pennsylvania, in the case lately depend-

ing therein, to No. 24 of May term, 1888, middle district, wherein The Lehigh Valley Railroad Company was plaintiff in error and The Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name and affixed the *the* seal of the said supreme court, at Harrisburg, this 20th day of October, A. D. 1888.

{Seal of the Supreme Court of Pennsylvania, Middle District, 1776.}

WILLIAM PEARSON,
Prothonotary of the Supreme Court of Pennsylvania, Middle District.

45 [Endorsed:] 24. May T., 1888. Lehigh Valley Railroad Co. *vs.* Commonwealth of Pennsylvania. Transcript of record.

46 In the Supreme Court of the United States. No. —. October Term, 1888.

LEHIGH VALLEY RAILROAD COMPANY
vs.
COMMONWEALTH OF PENNSYLVANIA.

Surwrit of error by Lehigh Valley Railroad Company to the supreme court of Pennsylvania.

Assignments of Error.

1. The learned court erred in not sustaining the company's exception to the decision of the court below, viz:

"The court erred in including in the judgment in favor of the Commonwealth a tax upon $201,630.65, receipts for transporting freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit."

2. The learned court erred in not sustaining the company's exception to the decision of the court below, viz:

"The court erred in deciding that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be.'"

3. The learned court erred in not sustaining the company's exception to the decision of the court below, viz:

"The court erred in not deciding that the transportation, by continuous carriage, of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall

have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

47 4. The learned court erred in affirming the judgment of the court of common pleas of Dauphin county in favor of the Commonwealth of Pennsylvania and against the Lehigh Valley Railroad Company.

5. The learned court erred in not reversing the judgment of the court of common pleas of Dauphin county.

To the honorable the judges of the Supreme Court of the United States:

The petitioner prays for a reversal of the judgment entered against it in the supreme court of Pennsylvania for the reasons assigned above.

LEHIGH VALLEY RAILROAD COMPANY,
By its attorney, M. E. OLMSTED.

48 [Endorsed:] In the Supreme Court of the United States. No. —. October term, 1888. Lehigh Valley Railroad Company, plaintiff in error, *vs.* Commonwealth of Pennsylvania, defendant in error. Assignment of errors. Olmsted.

Endorsed on cover: Case No. 13,400. Pennsylvania supreme court. No. 275. The Lehigh Valley Railroad Company, plaintiff in error, *vs.* The Commonwealth of Pennsylvania. Filed October 22, 1888.